

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00320-19-CR-W-DGK
)	
MUHAMMAD IBRAHIM ROLLIE,)	
)	
Defendant.)	

**GOVERNMENT’S RESPONSE TO
DEFENDANT MUHAMMAD IBRAHIM ROLLIE’S MOTION TO SUPPRESS**

The United States of America, by Beth Phillips, United States Attorney, and the undersigned Assistant United States Attorney, both for the Western District of Missouri, respectfully submits this response¹ to the defendant’s Motion to Suppress, filed June 15, 2011.

I. FACTUAL BACKGROUND

For many months Juan Marron’s (“Marron”) drug distribution ring, operating in large part in Kansas City, Missouri, was investigated through confidential informants, arranged buys, and Title III wire interceptions on Marron’s phone. Through this investigation, it was discovered that Marron was the main supplier for many of the co-defendants, including DeShaun Ceruti (“Ceruti”), the brother of the defendant. From May 30, 2010 to June 1, 2010, telephone calls were intercepted revealing that Marron was going to provide drugs to Ceruti. (ROI, ¶ 1)²

¹The United States gratefully acknowledges the extensive work of Elizabeth Landau, J.D. Candidate, University of Kansas Law School, Class of 2012, Summer Law Intern, WDMO, in the preparation of this motion.

² “ROI” refers to the Report of Investigation.

At approximately 2:05 p.m., June 1, 2010, Kansas City, Missouri police detectives and Drug Enforcement Administration agents observed Ceruti arrive at Marron's residence located at 111 South Lawn, Kansas City, Missouri, park his vehicle, a blue 1999 Dodge Durango, and then walk inside. (ROI, ¶ 6). At approximately 2:19 p.m., agents observed Ceruti walk out of Marron's residence with a white plastic bag and get in his blue 1999 Dodge Durango. (ROI, ¶ 6). Agents followed Ceruti to his mother's residence located at 308 Spruce, Kansas City, Missouri. (ROI, ¶ 6). Ceruti began to back the vehicle into the driveway, and as officers approached the vehicle, Ceruti backed the vehicle into the closed garage door of the residence. (IR, Pg. 4).³ Police Officer Evans ordered Ceruti to climb out of the vehicle and lie on the ground. (IR, Pg. 4).

Defendant Rollie came to the door of the residence and began demanding to know what was going on. (IR, Pg. 4). Police Officer Crump was forced to divide his attention between Officer Evans attempting to take the driver into custody and the defendant at the door, who was "becoming loud and belligerent and keeping his hands hidden behind the door." (IR, Pg. 4). Due to the rapidly evolving nature of the situation, Officer Crump ordered the defendant to exit the front door and lay down on the front porch. (IR, Pg. 4). Police Officer Hendershot arrived on the scene and placed the defendant in handcuffs and stood him up to frisk him for weapons. (IR, Pg. 4). While standing, Police Officer Hendershot observed a clear plastic bag containing a beige rock like substance (approximately 112 grams) in the defendant's right front shorts pocket, which was gapping open. (IR, Pg. 4). The defendant was placed under arrest for possession of a controlled substance. (IR, Pg. 4).

³ "IR" refers to Incident Report 10-40731.

II. ARGUMENTS AND AUTHORITIES

The defendant argues that the statements and evidence resulting from his arrest on June 1, 2010, should be suppressed as a result of the alleged illegal search and seizure. The defendant also argues that if the statements and evidence are suppressed, the counts against him should be dropped.

In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held that warrantless seizures based on less than probable cause could be constitutionally permissible.

[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

Terry, 392 at 30. An officer may frisk a suspect for the protection of himself or others nearby to discover weapons if “he has a reasonable, articulable suspicion that the [suspect] may be armed and presently dangerous.” *United States v. Roggeman*, 279 F.3d 573, 577 (8th Cir.2002) (citing *Terry*, 392 U.S. at 30).

“Courts are required to apply an objective test to resolve the question whether reasonable, articulable suspicion justified a protective search.” *Roggeman*, 279 at 577. Under this objective test the “officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Terry*, 392 U.S. at 27.

There are several factors that indicate a reasonable officer would believe the defendant was armed and dangerous. As the Officers were apprehending Ceruti and observing his suspicious behavior, an unknown man begins shouting at them from the front door of the house. They are dealing with Ceruti and cannot clearly see what is happening within the house. Officer Crump's report indicates that the defendant continued to raise his voice, becoming "loud and belligerent and keeping his hands hidden behind the door." (IR, Pg. 4). The defendant's response would lead an objective officer to suspect that the defendant could be armed and presently dangerous.

While carrying out the Terry stop, the Officers used handcuffs to restrain the defendant. Officers may use handcuffs as a reasonable precaution to protect their safety during a Terry stop. *United States v. Martinez*, 462 F.3d 903, 907 (8th Cir.2006). "However, the use of handcuffs is greater than a de minimus intrusion and thus requires the [officer] to demonstrate that the facts available to the officer would warrant a man of reasonable caution in the belief that the action taken was appropriate." *Lundstrom v. Romero*, 616 F.3d 1108, 1122 (10th Cir.2010) (internal quotation marks and citation omitted). Again, the Officers were unable to see what the defendant was hiding with his hand while he was behind the door, they were unsure of how many people may be in the house, and they were also trying to restrain Ceruti. When the defendant was ordered out of the house, it would be reasonable for an officer to cuff the defendant based on the surrounding events, and the uncertainty of the defendant's identity or what weapons he might be hiding.

When Officer Hendershot handcuffed the defendant and stood him up to frisk for weapons, which was well within his right to do, he observed the clear, plastic bag containing

drugs in the defendant's "gapping open" right front shorts pocket. In *Michigan v. Long*, 463 U.S. 1032, 1050 (1993), the seizure of contraband other than weapons during a lawful Terry search was justified by reference to the Court's cases under the "plain-view" doctrine. Police can seize objects without a warrant if they are in a lawful position to view, if the incriminating character is immediately apparent, and they have a lawful right of access to it. *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971). As has already been established, all of these requirements are met in this case.

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny the defendant's Motion to Suppress.

Respectfully submitted,

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By */s/ Bruce Rhoades*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 29, 2011, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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/s/ Bruce Rhoades

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